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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,006	02/25/2004	Frederick Buechel JR.	Stabo-2	3949
1218	7590 09/22/2006		EXAMINER	
CASELLA & HESPOS			MATHEW, FENN C	
	ON AVENUE C, NY 10016		ART UNIT	PAPER NUMBER
11211 1014	.,		3764	
			DATE MAILED: 09/22/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary		Application No.	Applicant(s)			
		10/787,006	BUECHEL ET AL.			
		Examiner	Art Unit			
		Fenn C. Mathew	3764			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
WHIC - Exten after 9 - If NO - Failur Any re	DRTENED STATUTORY PERIOD FOR REPLY HEVER IS LONGER, FROM THE MAILING DAISIONS of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. Period for reply is specified above, the maximum statutory period we to reply within the set or extended period for reply will, by statute, eply received by the Office later than three months after the mailing dipatent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 16(a). In no event, however, may a reply be tirr will apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	I. nely filed the mailing date of this communication. D (35 U.S.C. § 133).			
Status						
1)⊠	Responsive to communication(s) filed on <u>03 Ju</u>	<u>ly 2006</u> .				
•	This action is <b>FINAL</b> . 2b)⊠ This action is non-final.					
• —	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.					
Dispositi	on of Claims					
<ul> <li>4) Claim(s) 1-25 is/are pending in the application.</li> <li>4a) Of the above claim(s) is/are withdrawn from consideration.</li> <li>5) Claim(s) is/are allowed.</li> </ul>						
	6) Claim(s) 1-25 is/are rejected.					
7)	Claim(s) is/are objected to.					
8)□	Claim(s) are subject to restriction and/or	r election requirement.				
Applicati	on Papers					
9) The specification is objected to by the Examiner.						
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
•	inder 35 U.S.C. § 119					
•						
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No.</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> </ul>						
* See the attached detailed Office action for a list of the certified copies not received.						
Attachmen	t(s)					
1) Notice of References Cited (PTO-892)  4) Interview Summary (PTO-413)  Paper No(s)/Mail Date.						
3) Inform	e of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO/SB/08) r No(s)/Mail Date	5) Notice of Informal F 6) Other:				

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## **DETAILED ACTION**

## **Double Patenting**

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,712,744.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the current application are a broader version of the patented claims. Obviousness double patenting is proper when it can be shown that the claims of the application are anticipated by the patented claims.

Claim Rejections - 35 USC § 103

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over 4 Barker (U.S. 4,251,105). Barker discloses a handle frame having a generally U-shaped handle portion, the handle portion having a base member, a first and second arm, the plane of the handle portion being generally horizontal to the floor, the handle frame further including two telescopic members attached at an angle to the plane of the Ushaped handle portions, a generally U-shaped base frame positioned on the floor, having an elongated cross bar, the side members extending outwardly relative to each other, the base frame including a pair of elongated members extending generally upwardly and rearwardly from the cross bar, the pair of elongated members telescopically engaging the two telescopic members of the handle frame, and a locking device for maintaining the vertical dimension between the handle frame and the base frame thereby accommodating a wide variety of users of the apparatus. Barker fails to teach the side members extending radially outwardly moreso than the handlebars. Such a feature would be a matter of obvious choice to one of ordinary skill in the art in order to allow for more clearance for the legs of a user. Referring to claims 2-3, Barker fails to disclose the specific angles, however, the figures show an acute angle. The specific angles chosen are considered matters of obvious choice absent unexpected or

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undesired results. Referring to claim 4, Barker discloses a pair of wheels disposed on the front of the elongated cross bar apparatus. Referring to claim 5, as broadly claimed, Barker discloses feet. Referring to claim 6, Barker discloses cushioned material (2') on the gripping section. Referring to claim 7, Barker discloses a variable support surface (35) connected and extending between the two side members of the U-shaped base frame (note claim does not require direct connection). Referring to claim 8, Barker discloses embodiments in which the cushioned member extends at an acute angle relative to the frame of the handle frame. Referring to claims 9-25, the claims are substantially similar in scope to claims 1 -8 above. Note the above rejections. The feature of making a member removable is considered a matter of obvious choice within the knowledge of one of ordinary skill.

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## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fenn C. Mathew

September 15, 2006